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RELATIONSHIP BETWEEN COMPETITION LAW AND INTERNATIONAL TRADE

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ABSTRACT

Regulation of anticompetitive arrangements that impede development and reduce the well-being of individuals are critical components of the global framework for combating anticompetitive arrangements. Such legislation and policy is now widely acknowledged in both rich and developing countries, and its importance is growing. If cartels, abuses of dominant position, and mergers are allowed to continue unchecked and result in a lack of competition on the merits of the market, competition law is designed to dissuade them. Despite the significant progress made in recent years toward promoting international cooperation and convergence in competition policy, primarily through the International Competition Network (ICN), an informal network of competition authorities, there are still significant challenges ahead as globalisation continues to deepen and broaden its reach. It is for these reasons that the present study considers the necessity for additional coordinating mechanisms in order to manage the problems posed by an increasingly worldwide and networked economy. Several international initiatives have been launched in awareness of the basic complementarity between competition and trade policy, with the goal of formalising their interrelationships and better harnessing the synergies that result from this complementarity. As of this writing, none of these approaches has resulted in a legally enforceable framework that ensures a more effective application of competition policy in the context of international trade and investment. The relationship between competition law and international trade is the subject of this study, which was written by researchers.

KEYWORDS: Competition Law, International Trade, Competition Act 2002.

INTRODUCTION:

The Monopolies and Restrictive Trade Practices Act, which was passed in 1969, was India's first competition law (MRTP). The Monopolies and Restrictive Trade Practices Bill, introduced by the Parliament in 1967, was prompted by the Monopolies Inquiry Commission, which was established in 1964 and examined the financial deliberation of power. The Commission concluded that the then licencing regime in the country had aided large commercial houses in securing an unreasonably superior share of accreditations, resulting in the prevention and foreclosing of capability. The MRTP Act became effective on June 1, 1970, and the commission was established in August of that same year, both in the United Kingdom. It was revised again in 1984 and then again in 1991, according to the latest available information.

Also seen were substantial fiscal reform measures beginning in 1991, as well as changes in financial, economic, and trade policies; a change in methodology towards privatisation and globalisation; and the establishment of a competitive advantage. Because of this, the liberalisation method was designed to eliminate those sections of the MRTP Act that required extensive measures to be taken in order to obtain consent from the administration before to beginning any movement.

The Raghavan Committee, chaired by Mr. SVS Raghavan, was established by the Government of India in October 1999 to recommend a more prepared competition law system for the nation in accordance with global improvements, which may include the adoption of a new law or the modification of the MRTP Act, 1969, as appropriate. In May 2000, the Raghavan Committee presented its report to the government for consideration.

MRTP Act did not define significant terms such as maltreatment of strength, cartels, agreement or estimating, and it did not have an extraterritorial jurisdiction. The MRTP Commission could only issue a "stop this instant" notice to a respondent who had violated the law, and it could not impose any punishment on the respondent. The Raghavan Committee proposed that another opposition law be sanctioned rather than making further modifications to the MRTP Act, as opposed to making further amendments to the MRTP Act.

The MRTP Act, 1969, which was enacted in response to the recommendations of the Raghavan Committee, was repealed and replaced by the Competition Act, 2002, which became effective on September 1, 2009. While the primary goal of the MRTP Act, 1969 was to ban monopolistic, prohibitive, and uncalled for exchange rehearsals, the primary goal of the Competition Act, 2002 was to promote competition by making it easier to compete. While the MRTP Act of 1969 was primarily concerned with limiting the power of exchange, the Competition Act of 2002 focused on further restricting the abuse of predominance by businesses.

COMPETITION LAW IN INDIA:

Liberalization, privatisation, and globalisation (LPG) were recognised by the Indian government as a means of boosting the country's economic efficiency. The government did this by decentralising authority over the economy and lowering governmental control. Indian businesses are currently facing fierce competition in every sector of the country's expanding economy. Competition that is healthy and fair has been shown to be an effective strategy for increasing the efficiency of the economy. Consequently, the goal of adopting the competition law was to reduce monopolies while increasing competition.

In contrast to the goal of enacting competition legislation, intellectual property (IP) laws are intended to prevent inventions developed through research and development by inventor firms from being copied and sold by companies that produce similar products and profit from the sale of those products. To put it another way, intellectual property laws contribute towards the creation of monopolistic privileges, whereas competition law works against this. On the basis of this, it appears that the aims of both legislation are at odds with one another.

Competition laws are primarily concerned with the design of a set of rules that foster competition in local markets while also avoiding anti-competitive company practises and unwarranted government intervention. Furthermore, competition rules are drafted with the goal of preventing dominant companies from abusing their market position. Furthermore, competition legislation seeks to eliminate monopolisation of the manufacturing process, so stimulating the entry of new enterprises into the industry. Competition law seeks to achieve a number of important objectives, including the maximisation of consumer welfare and the increase in the value of manufactured goods. Patents and intellectual property laws, on the other hand, are monopoly legal rights that are awarded to the inventors and owners of works that are the outcome of human intellectual creation.

Industrial, scientific, intellectual, and artistic pursuits are only a few examples of what may be done with these. It is the owners' right to restrict others from utilising their invented subjected-matter for a limited length of time that is protected by intellectual property rights (IPR). Furthermore, intellectual property rights (IPR) rules pertaining to copyrights, patents, trademarks, industrial designs, and trade secrets prevent others from commercially exploiting the innovation. Intellectual property rights give the owner a competitive advantage over the rest of the industry or sector. When this advantage or dominating position is abused, a conflict arises between intellectual property rights and competition law.

Before the matter of Hawkins Cookers Limited against M/s Murugan Enterprises, a question was presented in the Delhi High Court, which was recently resolved. A pressure cooker gasket is manufactured by Hawkins Cookers Limited, which owns the trademark "Hawkins" and uses it on a variety of items including pressure cooker gaskets. For example, Murugan Enterprises, a pressure cooker gasket maker, uses the Hawkins trademark in respect of pressure cooker parts in order to ensure compatibility with the Hawkins trademarked pressure cooker. It was Murugan Enterprises' position before to the court that it had its own well-established trademark "Mayur," which included a prominent peacock on its product packaging, and that this was sufficient protection. In this case,

the Delhi High Court ruled that no reasonable person or purchaser could infer a commercial relationship between the "Mayur" brand of gaskets and the "Hawkins" brand of pressure cookers from the evidence presented. Furthermore, the court found that Murugan Enterprises did not attempt to benefit from Hawkins' trademark, nor did it attempt to establish a relationship between the two in this case. Moreover, according to the court, the defendants' use of the "Hawkins" mark was limited to demonstrating the suitability of the product to be used as an ancillary product in a Hawkins pressure cooker, and that such use would appear to fall within the exception carved out under Section 30 of the Trademarks Act, 1999, as well as under the terms of the agreement.

As a result, it is reasonable to assume that use of the trademark in connection with a product is required in order to identify the gaskets' suitability for the "Hawkins" brand of pressure cookers. According to Justice Kaul, "the goal of filing the litigation appears to be to create a monopoly over such (gaskets) auxiliary items so that no third party is able to offer the same in the market," which was also the situation in the Hawkins case. According to the judge, the use of the "Hawkins" trademark on the gaskets packaging would have been infringing if the trademark had been utilised as a trademark in the first place. Because Murugan Enterprise's use of the "Hawkins" mark was just suggestive and not intended to be utilised as a trademark, there would be no question of trademark infringement on their part. If dominant firms are found to be abusing their dominance by creating a monopoly in the market, courts will not be able to encourage them, as the Delhi High Court found in the Hawkins case. Dominant firms who abuse their dominance by creating a monopoly in the market will have a negative impact on the market share of smaller and/or firms who are in direct competition with such dominant firms.

Additionally, under the terms of competition law, the absence of substitutes in the market may be sufficient to establish market dominance in the market. Similar to this, a comparison of market shares between a dominating firm and its competitors is important in establishing whether or not a corporation has monopoly or dominance. Still, determining the minimal percentage of the market share that would be required to create dominance and/or monopoly for a particular firm in a given market appears to be a challenging task. Various court rulings on the subject of dominance have also failed to define a minimum percentage of a firm's market share that establishes dominance.

For the purpose of combating IPR monopolies, anti-competition legislation frequently includes two crucial tools, namely compulsory licencing and parallel importation. According to Article 31 of the Trade-Related Aspects of Intellectual Property Rights Convention, a compulsory licence is granted when a holder of an intellectual property right is permitted by the state to cede his exclusive ownership over such property (TRIP). Generally, compulsory licences are issued in specific circumstances, such as when it is necessary to protect the public health or respond to national emergencies, when there is no or insufficient exploitation of a patent in the country, and when it is in the overall national interest. Parallel imports, on the other hand, are items that are brought into the country without the permission of the applicable intellectual property owner and then sold legitimately on the open market in which they were purchased.

Section 3 of the new Competition Act 2002 (the Act), for example, deals with anti-competitive agreements that cannot be employed by IPR holders because they are in conflict with the competition laws. A brief introduction to the concept of patent pooling: it is a restricted practise in which enterprises in a specific manufacturing industry opt to pool their patents and agree not grant licences to third parties, while also establishing quotas and pricing. Second, a condition that restricts competition in the area of research and development or that forbids a licensee from using rival technology is considered anti-competitive under state and federal regulations. Third, under the law, a licensor is barred from determining the price at which the licensee is required to sell his or her goods. Despite the fact that the instances provided above are by no means exhaustive, they serve as samples of anti-competitive measures applicable to intellectual property rights under the Act. The Competition Commission of India (the Commission), which is mandated by Section 27 of the Act, also has the jurisdiction to penalise intellectual property rights holders who abuse their dominant position. The Commission is also permitted to penalise parties to an anti-competitive arrangement that is in violation of Section 3 of the Act under Section 4 of the Act, which is a provision found in the Act.

TRADE AND COMPETITION POLICIES:

The recent evolution of the global economic landscape makes it increasingly important that the competition and trade policy communities engage in a constructive strategic dialogue in order to ensure that anticompetitive and trade restrictive measures do not undo the gains in growth and efficiency that have been realised in recent decades. While at the same time, it is critical that the knowledge and skill that has been accumulated by the competition policy community in many countries over the past decade or so be applied even more effectively to the promotion of sustainable trade growth. It is critical that the benefits of globalisation and fundamental technological development be not unjustly captured by limited economic interests, but rather that they are spread as widely as possible among the global community.

The term "inclusive globalisation" refers to a process in which competitive markets distribute the benefits to all stakeholders in both rich and developing countries. Competition policy is the mechanism that will be used to accomplish this goal.

A re-evaluation of the current interplay between the realms of trade and competition policy is necessary in order to fulfil the full potential of a globalised economy in terms of encouraging sustainable growth, development, and broad-based improvements in welfare. A collection of ideas is put up in the following section, with the goal of making it easier to employ competition legislation and enforcement to better reap the benefits of trade liberalisation.

First and foremost, in order to avoid these gains from being undermined by increasingly sophisticated anticompetitive activities and arrangements with an international dimension, it may be necessary to re-examine the application and design of competition policy itself. We will examine reforms that should be implemented in the competition policy community to reduce the likelihood of inconsistent, improper, or abusive application and enforcement of competition policy, which could have a detrimental influence on trade and investment flows. In order to incrementally improve the international competition ecosystem, four related measures are proposed: multidimensional awareness-raising; enhanced coordination and collaboration at the supranational level; the introduction of an international dispute resolution and appeals mechanism—when countries and national competition authorities are ready in the context of bilateral and regional free trade agreements (FTAs); and the promotion of convergence in competition regimes at the national and regional levels.

RELATION:

First recognised in 1947 when the General Agreement on Tariffs and Trade (GATT) was established to alter exchange rules, the connection between global exchange and competition laws was established as well. This organization's successor, the World Trade Organization (WTO), was familiar with the process of reducing or eliminating trade barriers. In any case, competition law fell largely outside the purview of the World Trade Organization.

A long period of time, competitive strategies were considered to be a problem that originated within the organisation. Those days are long gone, and today, most competition rules throughout the world take a global viewpoint into consideration.

When it comes to value fixing, abuse of power in the technology industry, cross-border consolidations, and market sharing arrangements, to name a few examples, developments in infrastructure, advancement, and privatisation of specific areas, along with rapid technological change and global exchange, have unleashed extraordinary financial powers, which have swayed across various localities and influenced the global economy as a whole.

If the difficulties of location and overflowing are to be resolved, it is clear that more grounded components of global participation will be required. It should be stressed at this point that the activities described below are harmful to international trade because they are seen to be enemies of seriousness. In addition to the fact that it ensures that exchanging nations are in a position to reap the benefits of exchange progression, union in competition laws is appealing because it ensures that exchanging countries are in a position to reap the benefits of exchange progression.

Cross-line Mergers:

In particular, when there is a possibility of clashing decisions by the opposing specialists of the (at least two) purviews, a cross line consolidation becomes a source of concern. Various legislative guidelines or various investigations of rules by the experts in the two regions, distinct market circumstances and emerging states of competition, or, more broadly, various ends dependent on the realities, are all examples of situations in which there is a degree of disagreement between competition specialists, resulting in significant expenses being incurred as a result of the endeavours.

After reviewing Western Digital v. Viviti, experts from the United States, Europe, Japan, and Korea endorsed the exchange subject to Western Digital's divestiture of certain creation resources for Toshiba. In addition, the Ministry of Commerce mandated Western Digital to hold separate the Viviti business for two years with the option to apply for a waiver after that time.

According to the ruling in Google v. Motorola Mobility, while the EU and US both unambiguously cleared the case, the Ministry of Commerce of China determined that Google has a dominant business sector position in the keen portable terminal working framework market in China and could use this dominant position to compete in the downstream market of shrewd versatile terminal market through Motorola Mobility.

Worldwide Cartels:

Cartesian activities, such as level price fixing and deceptive arrangements within a country, as well as the division of areas in order to practise restraining infrastructure, are often held accountable by international cartels. A continual increase in the amount of fines that can be imposed as well as the length of jail terms is part of the agreements that have been reached by a number of public competition authorities to control cartels around the world.

The International Competition Network (ICN), established in 2001, is the only international organisation dedicated only to the execution of competition law, and it has emerged as a pioneer in increasing global engagement in competition law authorisation and enforcement.

The ICN does not exercise any rulemaking authority; rather, it just dictates the acceptable methods and how to carry out the equivalent, after reaching an agreement between its members. As a result of the Havana Charter, which recognised the importance of competition strategy for global exchange in 1948 but was never implemented because the United States refused to ratify it, and the issue of competition strategy being dropped from the Doha Round of Multilateral Trade Negotiations in 2001, the World Trade Organization (WTO) has failed to reach an agreement on a uniform competition strategy.

Competition laws are generally based on homegrown legal standards that are proposed to increase monetary efficiencies and approve the direction of ventures that have the potential to be destructive to the serious cycle, for example, tricky or exclusionary arrangements, anticompetitive consolidations, and abuse of dominant position. As a general rule, competition rules are sustained in court and are more plain and hardliner in nature, and do not contain the exchange arrangement approach in any way.

CONCLUSION:

In an expanding economy, innovation has always served as a catalyst, resulting in an increase in innovation. The introduction of new technologies results in a healthy degree of competitiveness at both the macroeconomic and microeconomic levels. Intellectual-property-rights rules help to prevent these innovations from being illegally used. Consequently, intellectual property and competition rules must be applied in tandem to ensure that the interests of all stakeholders, including the innovator, as well as those of consumers and the general public, are respected.

However, neither policy should be implemented at the expense of the general population. The unifying goal of both policies is to encourage innovation that would eventually contribute to the economic progress of a country. This requires the competition authorities to secure the coexistence of competition policy and intellectual property rules, because a balance between the two laws would result in both economic and consumer welfare benefits.

Competition law and international exchange law have travelled in a variety of directions and have undergone a variety of transformations. Traditionally, competition law has been relegated to the public financial context, whereas international exchange law has intervened in international circles to assist in the loosening of administrative estimates that control and limit cross-border commerce. These two domains of law communicate with one another in a variety of monetary situations and work in a complementary manner with one another.

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